IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.03. 2007

CORAM:
THE HONOURABLE MR. JUSTICE V. DHANAPALAN

W.P. No.1069 of 2004 & W.P.M.P. No.1105 of 2004

P. Kappusami .. Petitioner

vs.

1. Chennai Port Trust
Represented by its Chairman
Chennai - 600 001

2. The Chief Mechanical Engineer
Chennai Port Trust
Chennai - 600 001 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus as stated therein.

For petitioner : Mr. Vijay Narayan, Senior Counsel
for Mr. R. Parthiban

For respondents : Mr. R. Karthikeyan

O R D E R

The prayer in the writ petition is for issuance of a writ of certiorarified mandamus calling for the records relating to the order of the first respondent in Proceedings No.CME/A3/2464/2003/EME dated 10.12.2003 and to quash the same and to consequently direct the respondents to promote the petitioner to the post of Assistant Executive Engineer (Electronics) with effect from 14.09.2001 with all benefits including arrears of pay.

2. The case of the petitioner, in brief, is as under:

The petitioner who has a basic degree in B.Sc. (Physics), M.Sc. (Physics) with specialization in Electronics and M.Tech. degree in Laser and Electro Optical Engineering which is considered as a post graduate degree in Electronics Engineering, joined Chennai Port Trust as Assistant Engineer (Electronics) on 13.01.1990 pursuant to the appointment order dated 10.01.1990. The qualification prescribed for the said post is a post-graduate degree in Electronics Engineering. The qualification for the next higher post i.e. Assistant Executive Engineer (Electronics) also is

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a post-graduate degree in Electronics Engineering. While filling up two vacancies in the post of Assistant Executive Engineer (Electronics), one Ravikumar who is senior to the petitioner, was promoted but the petitioner's promotion was kept pending for want of certain clarifications. Aggrieved by this, he made representations on 15.11.2001, 06.12.2001 and 28.08.2003 and a reply dated 10.12.2003 was given by the second respondent stating that the petitioner has qualified in only M.Tech Degree of some other discipline and as such, his representation for promotion is pending on the ground that he does not have the requisite qualification.

3. Aggrieved by this reply of the second respondent, this writ petition has been filed by the petitioner.

4. The case of the second respondent, according to his counter, is as follows:

> The qualification of M.Sc. (Physics) possessed by the petitioner has Electronics only as an ancillary subject and the petitioner's M.Tech degree in Laser and Electro Optical Engineering cannot be said to be equivalent to post-graduate degree in Electronics Engineering which is the prescribed qualification for the post of an Assistant Executive Engineer (Electronics). Since the Employment Exchange which sponsored the petitioner's name mentioned his qualification as M.Tech (Electronics), the then Departmental Promotion Committee felt that the qualification in M.Tech degree in Laser and Electro Optical Engineering possessed by the petitioner was equivalent to M.Tech (Electronics). Further, though there were two vacancies for the post of Assistant Executive Engineer (Electronics), considering the actual needs and exigencies of the situation, only one regular vacancy was filled up and the second vacancy which was a leave vacancy was left unfilled.

5. The first and foremost contention put forth by Mr. Vijay Narayan, learned Senior Counsel appearing for the petitioner is that when the petitioner was appointed and confirmed as an Assistant Engineer (Electronics), taking into account his M.Tech. degree in Laser and Electro Optical Engineering as equivalent to a post graduate degree in Electronics Engineering and when the qualification for promotion to the next higher level also is a post graduate degree in Electronics Engineering, the stand taken by the respondents that the petitioner does not have requisite qualification is arbitrary, illegal and in violation of Articles 14 and 16 of the Constitution.

6. The second contention raised by the learned Senior Counsel is that the respondents have failed to take into account the certificates obtained by the petitioner from the Faculty of Electrical Engineering, Anna University and the Institute of Electronics and Telecommunication Engineering to substantiate that the M.Tech degree secured by him is equivalent to a post-graduate degree in Electronics Engineering. In this connection, it is his further contention that the respondents have

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not considered the advertisements of UPSC, ONGC, IAF and Government of India also which say that a degree in M.Sc.(Physics) with specialization in Electronics is equivalent to a bachelor's degree in Electronics Engineering.

7. In support of his contention that the petitioner should not be denied his promotion as an Assistant Executive Engineer (Electronics) for no fault of his and particularly since he has put in nearly seventeen years of service as an Assistant Engineer (Electronics), Mr. Vijay Narayan has relied on:

a. a judgment of the Supreme Court reported in (2001) 3 SCC 328 in the matter of Buddhi Nath Chaudhary & Others vs. Abahi Kumar & Others: (para 6):

> "The selected candidates, who have been appointed, are now in employment as Motor Vehicle Inspectors for over a decade. Now that they have worked in such posts for a long time, necessarily they would have acquired the requisite experience. Lack of experience, if any, at the time of recruitment is made good now. . ."

b. a Supreme Court judgment reported in (1997) 6 SCC 365 in the matter of Raj Pal Verma and others vs. Chancellor of Meerut University & Others: (para 10)

> "The third respondent came to be appointed as late as in March 1979 and 18 years have passed and we are informed that he is on the verge of retirement next year. Though he was not qualified for appointment at the first instance as he did not possess the Ph.D. degree in Ancient History, the subject to be taught, nonetheless, since the time has run out, we decline to disturb the appointment of the third respondent with the observation that there is deterioration of standards of rectitudes in management of higher educational institutions and with the fond hope that the Executive would look into and cure the malady and restore the lost glory of the educational institutions."

c. yet another judgment of the Supreme Court reported in (1993) 3 SCC 591 in the matter of Dr. M.S. Mudhol & another vs. S.D. Halegkar & others: (para 7)

> "Whatever may be the reasons which were responsible for the non-discovery of the want of qualifications of the first respondent for a long time, the fact remains that the court was moved in the matter after a long lapse of about 9 years. The post of the Principal in a private school though aided, is not of such sensitive public importance that the Court should find itself impelled to interfere with the appointment

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by a writ of quo warranto even assuming that such a writ is maintainable. This is particularly so when the incumbent has been discharging his functions continuously for over a long period of 9 years when the court was moved and today about 13 years have elapsed. The infraction of the statutory rule regarding the qualifications of the incumbent pointed out in the present case is also not that grave taking into consideration all other relevant facts.. . .”

d. a Supreme Court judgment reported in AIR 1977 SC 112 in the matter of The Nayagarh Cooperative Central Bank Ltd. and another vs. Narayan Rath and another: (para 4)

“The writ petition filed by respondent no.1 could succeed, in our opinion, on the narrow ground that he had been permitted to function for over thirteen years as Secretary of the Bank and that his appointment as Secretary was decided upon in a meeting over which the Registrar of Cooperative Societies had himself presided. The writ petition in substance is directed not against any order passed by the Cooperative Bank but against the order passed by the Registrar disapproving the appointment of respondent No.1 as Secretary of the Bank. It was not open to the Registrar, in our opinion, to set aside respondent No.1’s appointment as a Secretary after having acquiesced in it and after having, for all practical purposes, accepted the appointment as valid. It is undesirable that appointments should be invalidated in this manner after a lapse of several years.”

8. Per contra, Mr. R. Karthikeyan, learned counsel for the respondents has contended that based on the letter sent by the Employment Exchange which specified that the petitioner possesses M.Tech. (Electronics) qualification, the petitioner was offered the post of Assistant Engineer (Electronics) and at no point of time, the petitioner's qualification was considered to be equivalent to a post-graduate degree in Electronics.

9. Secondly, it is the contention of the counsel for the respondents that out of two vacancies for the post of Assistant Executive Engineer (Electronics), the first vacancy which was a regular vacancy was filled up and as far as the second one which was a leave vacancy, there was no absolute necessity for filling up the same and thus when, filling up of a vacancy is purely the discretion of the Management, the petitioner cannot insist that he has to be necessarily given promotion.

10. Finally, replying to the contention of the learned Senior Counsel for the petitioner that the respondents have not taken into consideration the certificate issued by Anna University to certify the equivalence of his M.Tech qualification to a post-graduate degree in

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Electronics Engineering, the counsel for the respondents has contended that the Professor and Head of the Centre for Laser Technology in the Department of Physics of Anna University is not a competent authority to issue an equivalence certificate. In this connection, he has taken me through Regulation 10 of Schedule II to Anna University Act according to which, it is only the Academic Council of Anna University which can issue equivalence certificate and on that ground, the non-consideration of the equivalence certificate by the respondents cannot be found fault with.

11. I have given careful thought to the case of both the parties, the arguments advanced by the counsel on either side and the judgments relied on by the learned Senior Counsel for the petitioner in support of his arguments.

12. Before proceeding further, it would be useful to refer to the manner of appointment to the post of Assistant Executive Engineer (Electronics) which was gazetted on 11th August 2004 and the relevant portion reads as under:

Manner of appointment to the post of Asst. Executive Engineer (Electronics)

Whether by direct recruitment departmental promotion or transfer	By departmental promotion
Qualification	Must possess a degree in Electronics Engineering from a recognised University, post graduate degree in Electronics Engg. will be preferable. (or) Must possess a diploma in Electronics Engineering of State Board of Technical Education and Training or its equivalent from a recognised institution or Board.
Experience	Must have served as Assistant Engineer (Electronics) for a period of not less than five years.

13. It is not in dispute that the petitioner is a holder of B.Sc. (Physics), M.Sc. (Physics) with specialization in Electronics and M.Tech in Laser and Electro Optical Engineering. It is also not in dispute that he joined the respondents as Assistant Engineer (Electronics) on 13.01.1990 and has put in over seventeen years of blemishless service. The only point for consideration in this petition is whether the respondents are right in denying petitioner's due promotion on the ground that he is not possessing the requisite qualification, namely, post-graduate degree in Electronics Engineering or in other words,

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whether the petitioner's qualification is equivalent to that of post-graduate degree in Electronics Enginering.

14. The main defence of the respondents is that the qualification of M.Tech in Laser and Electro Optical Engineering possessed by the petitioner is not equivalent to the prescribed qualification of post-graduate degree in Electronics Engineering for the post of Assistant Executive Engineer (Electronics). It is an admitted fact that the qualification for the post of Assistant Engineer (Electronics) and its next higher post, namely, Assistant Executive Engineer (Electronics) is one and the same and that is a post-graduate degree in Electronics Engineering. Undisputedly, the petitioner was appointed as Assistant Engineer (Electronics) only by giving due recognition to his qualification of M.Tech in Laser and Electro Optical Engineering. For this, it would be the reply of the respondents that the petitioner was offered appointment based on the letter of the Employment Exchange specifying the petitioner's qualification as M.Tech (Electronics). When the fact remains that the petitioner has been appointed as Assistant Engineer (Electronics) in the year 1990 and has served for more than 17 years with a good track record, I am of the considered view that the respondents cannot deny petitioner's promotion on the ground that the petitioner was appointed by the Departmental Promotion Committee based on the information given by the Employment Exchange that he was a holder of M.Tech (Electronics). The reason why I am of such a view is firstly, when a Committee is constituted for a particular purpose, as in this case for screening the candidates for the purpose of selection as Assistant Engineer (Electronics), it is the duty of the Committee members to assess the suitability of the incumbents by proper verification of their testimonials and by giving due consideration to their past track record and such other relevant criteria. When the Departmental Promotion Committee had not done this exercise and had rather relied on the information given by the Employment Exchange, the respondents are estopped from contending that the petitioner was selected on the basis of information given by the Employment Exchange, particularly when the petitioner is not at fault. Secondly, when the petitioner has put in 17 years of service as Assistant Engineer (Electronics), naturally, by virtue of his practical experience, he gains the knowledge of a person who possesses a post-graduate degree in Electronics Engineering. All the four judgments relied on by the learned Senior Counsel for the petitioner are directly on this point directly and lend support to this view of mine. It is relevant to point out in this context that long years of experience would enable a person to gain expertise which would certainly aid him to effectively discharge his duties in the post to which he is to be promoted.

15. Though it is contended by the respondents in their counter that filling up of leave vacancy is purely the discretion of the Management and the petitioner cannot insist on his promotion, the same has not been assigned as a reason in the order under challenge for rejecting promotion to the petitioner. That being the case, there is no other option except to presume that this contention of the respondents is only created for the purpose of the case.

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16. Next, as for the requisite qualification for the post of Assistant Executive Engineer is concerned which is extracted above, it is stated that a post-graduate degree in Electronics Engineering will be preferable and it is not spelt out that it is a sine qua non. Thus, when it is a fact that the post-graduate degree in Electronics Engineering is not specified as a sine qua non and the petitioner has put in 17 long years of service, there can be no doubt that he would have definitely acquired the expertise required for the post of Assistant Executive Engineer (Electronics). Further, when it comes to appointment by promotion, suitability of the petitioner to the promoted post plays a pivotal role, particularly when post-graduate degree in Electronics Engineering is stated to be given preference and not mandated. Since the suitability of the petitioner is not at all a point for dispute in view of his blemishless service all these 17 years as an Assistant Engineer (Electronics), he certainly deserves to be promoted as Assistant Executive Engineer (Electronics) in the context of equitable remedy.

17. Coming to the aspect of competence of the Professor and Head, Centre for Laser Technology, Anna University, to issue Equivalence Certificate, it is the contention of the respondent that it is only the Academic Council of Anna University which is competent to issue Equivalence Certificate as per Regulation 10 of Schedule II to Anna University Act. The said Professor & Head of the Centre for Laser Technology, Anna University has certified that the M.Tech qualification which the petitioner has, is a post-graduate programme in the Faculty of Electrical Engineering which has been planned and curriculum developed to meet the requirement of man-power development in the frontier areas of Electronics, in particular, opto-electronics and the candidates with this qualification are well-placed in giant organizations such as BEL, ISRO, DRDO, DAE, BARC and CAT. Even assuming but without conceding that the Professor & Head of the Centre for Laser Technology, Anna University is not competent enough to issue the Equivalence Certificate and without taking into account the value of the Equivalence Certificate, the petitioner's experience as Assistant Engineer (Electronics), undoubtedly, is a factor to be reckoned with and his practical experience in the field of Electronics would speak volumes of his suitability to the promoted post and would be definitely a sure guide to assess his suitability for promotion, particularly when the qualification prescribed for the posts of Assistant Engineer (Electronics) and Assistant Executive Engineer (Electronics) is one and the same.

18. It is to be noted that it is not the case of the respondent that the petitioner has been lacking in his efficiency as an Assistant Engineer (Electronics) during the last 17 years. Thus, no doubt whatsoever, arises with regard to the suitability of the petitioner to the post of Assistant Executive Engineer (Electronics). That being the case, the action of the respondent in interpreting the petitioner's qualification to his disadvantage is not at all proper.

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19. In the light of the foregoing discussion and the rulings of the Supreme Court relied on by the counsel for the petitioner, I am of the considered opinion that the respondents are not correct in issuing the impugned order stating that the petitioner does not possess the requisite qualification and hence, not eligible for promotion. In that view of the matter, the impugned order dated 10.12.2003 passed by the first respondent is quashed and the respondents are directed to promote the petitioner to the post of Assistant Executive Engineer (Electronics) with effect from 14.09.2001 with all benefits, within a period of eight weeks from the date of receipt of a copy of this order.

In fine, the writ petition stands allowed. No costs. Consequently, the connected W.P.M.P. is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

cad

To

1. The Chairman
   Chennai Port Trust
   Chennai - 600 001

2. The Chief Mechanical Engineer
   Chennai Port Trust
   Chennai - 600 001

1 cc To Mr.R.Parthiban, Advocate, SR.15217.
1 cc To Mr.R.Karthikeyan, Advocate, SR.15182.

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